

DATE: October 20, 1986

TO: G.K. George, Director of Personnel & Training
- Fire Department
FROM: City Attorney
SUBJECT: Fair Labor Standards Act - Offduty Training
Time

You have asked if the Fire Department is required to include as hour's worked, for the purpose of calculating overtime under the Fair Labor Standards Act, time that members of the firefighter's classification spend during their offduty hours in training to obtain a class 1 driver's license. The possession of this license is a prerequisite for taking a promotional exam for engineer.

Attendance at offduty training programs and similar activities need not be counted as hours worked for overtime calculations if the criteria established in 29 CFR 785.27 are met. Those criteria are (1) attendance is outside of employee's regular working hours; (2) attendance is in fact voluntary; (3) the training course is not directly related to the employee's job; and (4) the employee does not perform any productive work during such attendance. The regulations further specify that if an employee on his own initiative attends a training course after hours for the purpose of career advancement, that time is not hours worked for the employer even if the course is related to the job and incidentally improves the employee's skill in doing his or her regular assignment. 29 CFR 785.29.

Therefore, time spent by a firefighter attending an offduty course to obtain a driver's license required for promotion should not be included as hours worked under the Fair Labor Standards Act.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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